

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKLIN DALE HEATH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43157

FILED

OCT 06 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Reharde*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On August 28, 2003, the district court convicted appellant, pursuant to a guilty plea, of grand larceny. The district court sentenced appellant to serve a term of eighteen to sixty months in the Nevada State Prison. The sentence was imposed to run concurrently with the sentence imposed in District Court Case No. C187267. Appellant did not file a direct appeal.

On September 10, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed and moved to dismiss the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

conduct an evidentiary hearing. On November 19, 2003, the district court denied appellant's petition. No appeal was taken from that order.

On November 14, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 29, 2004, the district court dismissed appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a petition for post-conviction habeas corpus relief.¹ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.²


Appellant did not assert any cause for failing to present his claims in his first petition or for again presenting similar claims in the instant petition. Further, appellant failed to demonstrate actual prejudice. Therefore, we conclude that the district court did not err in dismissing appellant's petition.

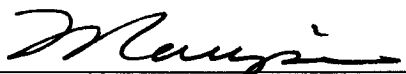
¹See NRS 34.810(2).

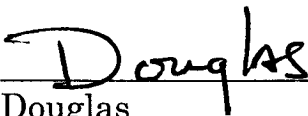
²See NRS 34.810(3).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Franklin Dale Heath
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.